

Juvenile Justice as a Part of Child and Adolescent Care

Devashish Konar

Mental Health Care Centre
Burdwan (West Bengal), INDIA

ABSTRACT

Juvenile justice has been given some shape with Juvenile Justice Act 2000 AD. Persons dealing with children need to sensitize themselves with this Act. One needs to know the provisions made, to understand whether it is being properly implemented. Only on observing it being implemented, can one get insight into the problems inherent in it, and if one knows the problems, one can suggest improvements in the Act. Even if the law gives adequate guidelines, institutions are still needed to look after the children in distress or children in conflict with law. For successful compliance of Court orders, and to punish violators, monitoring bodies need to be set up, who should be given legal powers as well. Effective child protection and development depends on skills, knowledge and judgment of all professionals, personnel and staff working with children.

Key Words: Juvenile Justice Act, Board, Police, Abuse, Child Soldier, Terrorist

Introduction

“So long as little children are allowed to suffer, there is no true love in this world.” Justice is everybody’s right. Children’s justice is to be ensured by adults because they can not lobby for themselves. According to the 2001 census India is estimated to have more than 400 million children below the age of 18 and we need a separate group of social workers, politicians & professionals to look after their interests. The two reasons that compel a re-examination of Juvenile Justice are, lack of clear understanding, and inadequacies of the system, which may lead to re-criminalizing delinquency.

Background of Juvenile Justice

The Constitution on India provides the basis for the legal framework to protect children, whom it recognizes as a discrete group with identifiable rights and needs. The constitution mandates child protection as a special provision in Article 15 (3). Article 39 (E) & (F) provides protection of children’s healthy development. Article 24 prevents children from working in hazardous situations below 14 years. Article 45 provides the right of children for free and compulsory education and Article 47 prohibits the consumption of liquor and intoxicating drugs, except for medical purposes. Moreover, Indian Penal Code (2005) provides protection of children from sexual abuse in sections 354, 375 and 509, selling of minors for prostitution in sections 366, 366A, 366B and 372, buying minors for the purpose of prostitution in section 373 and non-consensual assault of male child in section 377. A kind of

criminal or quasi-criminal jurisdiction was provided under the Juvenile Justice Act (Government of India (GOI), 1986), covering proceedings for both the categories of children, viz., delinquent juveniles as well as the neglected juveniles. The Convention on the Rights of the Child (United Nations, 1989) provides elaborate catalogue of children's rights that can be grouped into four categories: Right to Survival, Right to Protection, Right to Participation and Right to Development. The Juvenile Justice Act (JJA) (GOI, 1986) was inadequate as non-institutional methods such as family and school based preventive services to deal with juvenile delinquency were neither specified nor explored. Moreover, the Act did not directly deal with child sexual abuse. Despite the law, children were taken for interrogation overnight, detained, tortured and released in the morning. So, the Juvenile Justice Act (GOI, 1986) got replaced by the most comprehensive law to deal with children's right, Juvenile Justice (Care & Protection of Children) Act (GOI, 2000).

Persons to be protected by The Juvenile Justice Act (2000)

A person who has not completed 18 years of age is a juvenile. If he or she is without any home or settled place, or resides with a person, who could be dangerous, needs protection. A person who is mentally or physically challenged or suffering from terminal diseases having no one to look after needs to be covered under this Act. An abandoned, missing or runaway child, who is being or likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts and is a victim of an armed conflict, civil commotion or natural calamity needs to be taken care of (GOI, 2000).

Juvenile Justice Board

Each board consists of a Metropolitan Magistrate, trained in Child Psychology and two social workers, at least one of them a woman. Every such Board shall have the powers conferred by the Code of Criminal Procedure, 1973, on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class, and the Magistrate on the Board shall be designated as the Principal Magistrate. No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years. There shall be at least two members including the Principal Magistrate present at the time of final disposal of the case. When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or a child, he shall without any delay record such opinion and forward the juvenile or the child to the right place under care of the right authority (GOI, 2000).

Observation homes

Any State Government may establish and maintain either by itself or under an agreement with voluntary organizations, observation homes in every district or for a group of districts, as may be required for the temporary reception of any juvenile in conflict with law. Various types of services are to be provided by them for rehabilitation and social integration of juveniles (GOI, 2000).

Special Juvenile Police Unit

When a juvenile in conflict with law is apprehended by police, he has to be placed under the charge of the Special Juvenile Police Unit. This police unit has to be specially sensitized and trained by inter-disciplinary trainers about needs and welfare of children (GOI, 2000).

Trial procedure

In case of a juvenile, the parent, guardian or probation officers, as the case may be, should be informed. No juvenile can be charged with or tried for any offence together with a person who is not a juvenile (GOI, 2000).

Process of rehabilitation and social reintegration

The processes are adoption, foster care, sponsorship and sending the child to an after care organization (GOI, 2000).

Abuse

In case of abuse, general family context is more important than any abusive event within it. Appropriate legislative, administrative, social and educational measures should be taken to protect the child. Recent interest shown in this area illustrates the concern of professionals, parents and children. Sometimes, children being ignorant, helpless and poor are easy victims of police abuse (Lyon, 2002; Williams, 2002).

Recommendations to protect abuse by police

Age verification and medical examination should be mandatory, prior to detention, during detention, and on release, by independent medical authorities. Sick juvenile detainee should be referred to specialized medical services. Some police officers should be specially trained for this purpose. Every police station should have one "Juvenile or Child Welfare Officer", who is adequately trained and experienced (Human Rights Watch Children's Rights Project, 1986).

Implication of Practice: Child as an evidence

Court rooms can be highly stressful for children. To minimize their stress, pre-trial preparation for children is essential. Secondary victimization should be prevented (Lyon, 2002).

Child Soldier

By now, it is well accepted internationally, that the involvement of children in armed forces has to be stopped. The admission in military academies for children, without provision of quitting, should be stopped. Children captured during war should get child friendly treatment (Brett, 2002).

Children and Terrorism

Many recruits of terrorist groups are juveniles under the age of 18, who can hardly access the judicial system. The usual daily news headlines are: "Troops have killed so many terrorists today." You will never come to know how many of them were children (Brett, 2002).

Shillong Declaration

The Shillong Declaration on India's Children in Armed Conflict (Shillong Declaration, 2002) appealed to put an end to use of children as militants in terrorist and private armed conflicts, with determination to put an end to the use of child soldiers. It emphasizes physical, psychological & cultural healing of children in armed conflict.

Publicity prohibited

No report of any enquiry disclosing the name, address or any other particulars, regarding a juvenile in conflict with law under this Act should be released in any newspaper, magazine or visual media, which may lead to the identification of the juvenile (GOI, 2000).

Areas of concern regarding The Juvenile Justice Act (GOI, 2000)

The act fails to express the minimum age, below which the Act would not be applicable. The definition of juvenile delinquency provides very little scope for petty acts to be dealt within the community. There is no concept of parental responsibility. The education, training and recreation of children, who are in observation homes, have not been provided for. Besides, basic or school education, even higher education and training of these children should be considered in this Act. The Act fails to provide for procedural guarantees like right to counsel and right to speedy trial. The Act does not take into account the orders and directions of the supreme court and the various high courts relating to determination of the age of the child. It empowers the Juvenile Justice Board to give a child in adoption; even though, it is the Child Welfare Committee that deals with children in need of care and protection. The Act is silent on inter-country adoption. There is no linkage between the Juvenile Justice Act 2000 and the other legal provisions relating to children, for instance child labor, primary education, sexual abuse, adoption, disabilities and health.

Juvenile Justice is not taken up seriously

Many states have still not constituted adequate number of juvenile courts or juvenile welfare boards. There is a poor network of juvenile observation homes or reception-cum-classification centres. Even if, some observation homes or boards do exist, they are not manned by the kind of sensitive personnel envisaged under the JJA. Even today, juvenile justice thrives under the shadow of the adult criminal justice agencies and institutions (like the police). Moreover, the juvenile adjudicatory cadres are drawn from the pool of the magistrates from the state.

Things to be done

There is a need to introduce the concept of guardian or child's legal counsel or a social worker involved throughout the court proceedings in which children are involved. NGOs can pressurize the government for law reform. For successful compliance of Court orders, and to punish violators, monitoring bodies need to be set up, who should be given legal powers as well. One area where further action is required is that of providing a support person for children during the investigative process, courtroom appearance and after the trial is over, has much to commend itself, and would enable the child to have a single support person to help him /her navigate the entire process.

Status of Juvenile Justice Act (GOI, 2000)

The implementation of The Juvenile Justice (Care and Protection of Children) Act of 2000 remains incomplete, till date. The enactment of any legislation does not guarantee its enforcement. Implementation has to be taken care of, by the government, as well as by professional and social agencies.

Conclusion

Juvenile justice has been given some shape with Juvenile Justice (Care and Protection of Children), Act (GOI, 2000). Those dealing with children need to sensitize themselves with this Act. Provisions and problems of the Act need to be understood. Then only, can improvement be suggested.

While judging JJA (GOI, 2000), one should not be just a critique; rather, both sides of the coin ought to be highlighted. The failures, which result in tragic consequences, inevitably attract a great deal of attention and criticism, especially for those centrally involved, and this is often justified. It is also important to know about the many cases in which good results have been obtained and as a result which, many potential tragedies have avoided (Williams, 2002).

Lastly, one should not forget that a juvenile delinquent, could be, nothing more than a poor child caught red-handed in the struggle for survival and he or she deserves an empathic treatment.

References

Brett, R.(2002) Juvenile Justice, Counter-terrorism and Children, In: Disarmament Forum, Vol 3, Page 29-36.

Government of India (1986) Juvenile Justice Act, New Delhi

Government of India (2000) Juvenile Justice (Care and Protection of Children) Act, New Delhi

Human Rights Watch Children's Rights Project (1986) Police Abuse And Killings of Street Children in India, Human Rights Watch Children's Rights Project, Human Rights Watch/Asia, Human Rights Watch, New York · Washington · London · Brussels, by Human Rights Watch, USA. (<http://www.hrw.org/reports/1996/India4.htm>).

IPC (2005) The Indian Penal Code (45 of 1860) as amended by The Election Laws (Amendment) Act, 2003 (24 of 2003) with Classification of Offences and State Amendments. Universal Law Law Publishing Co.Pvt. Ltd., Delhi

Lyon, C.M. (2002) Child Protection and Civil Law. In: The Child Protection Handbook, Kate Wilson, Adrian James (Editors), Harcourt Publishers Limited, 2nd edition, page -200.

Shillong Declaration (2002) Shillong Declaration on India's Children in Armed Conflict, National, Workshop on Children in Armed Conflict, Shillong 10 - 12 January 2002

United Nations (1989) Rights of the Child, New York.

Williams, J. (2002) Child Protection and The Criminal Justice System. In: The Child Protection Handbook, Kate

Wilson, Adrian James (Editors), Harcourt Publishers Limited, 2nd edition, page -372.

1. **Devashish Konar MD (Corresponding Author)**
Mental Health Care Centre, Burdwan, West Bengal – 713103, India